

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

TERRANCE WATERMAN, #K3600

PETITIONER

VERSUS

CIVIL ACTION NO. 3:05cv112HTW-JCS

RONALD KING and JIM HOOD

RESPONDENTS

ORDER

On February 28, 2005, this cause was transferred to the United States Court of Appeals for the Fifth Circuit. On May 20, 2005, this Court was in receipt of a certified copy of an order from the Fifth Circuit which denied the petitioner's motion to file a successive habeas corpus application. The petitioner then filed a second Motion for Relief from Judgment or Order pursuant to Rule 60(b)(1) thru (6) of the FEDERAL RULES OF CIVIL PROCEDURE [16] on October 31, 2006, which is presently pending before this court. Having considered the issues raised in the motion, the Court finds that the motion [16] is not well taken and should be denied for the following reasons.

In his motion [16], the petitioner prays that this Court will "answer the . . . claims on the merits and enter an Order requiring the State to file an Answer or other pleadings or to take any other action as this Court deems appropriate." Apparently, the petitioner fails to appreciate that this Court did not arbitrarily close and transfer his cause. In order to consider the petitioner's motion for habeas relief, this Court must have an order from the United States Court of Appeals for the Fifth Circuit authorizing it to do so. See 28 U.S.C. § 2244(b)(3)(A). In other words, this Court is without jurisdiction to consider this claim. See Abdur'rahman v. Bell, 537 U.S. 88, 92 n.6 (2003).

When a petitioner fails to first seek the permission of the appeals court, the district court should then transfer the cause to the appropriate appellate court for a determination of whether the successive or second petition should be allowed. See 28 U.S.C. § 1631; see also Abdur'rahman v. Bell, 537 U.S. 88, 92 n.7 (2003); see also In Re Epps, 127 F.3d 364 (5th Cir. 1997). Hence, petitioner's motion [16], once again, merely expresses disagreement with the law that compels him to procure the approval of the United States Court of Appeals for the Fifth Circuit for a determination of whether a petitioner should be allowed to proceed with a successive or second petition. As such, this Court finds that petitioner's motion [16] is not well-taken and should be denied.

IT IS THEREFORE ORDERED that plaintiff's Motion [16] for Relief from Judgment or Order pursuant to Rule 60(b)(1) thru (6) of the FEDERAL RULES OF CIVIL PROCEDURE is hereby **denied**.

SO ORDERED this the 6th day of February, 2007.

s/ HENRY T. WINGATE
CHIEF UNITED STATES DISTRICT JUDGE

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